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October 23, 2015

Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6959

Dear Mr. Jordan:

On behalf of the Democratic National Committee ("Committee") and Andrew Tobias, in his official capacity as treasurer ("Respondents"), this letter responds to the complaint filed by Judicial Watch in the above-referenced matter. The complaint fails to allege facts to support a violation of federal campaign finance law, and should be immediately dismissed.

As detailed below, the complaint alleges that Cindy Nava---during her one-month summer internship---violated 11 C.F.R. § 110.20(i), which prohibits foreign nationals from participating in the decision-making of political committees regarding activities such as contributions and expenditures. In fact, the complaint does not allege any specific facts showing that Ms. Nava had a role in such sensitive decisions or was involved in administering or managing the Committee and indeed, as an intern, she was simply not involved in these activities. To the contrary, Ms. Nava performed clerical duties, such as online research, reviewing social media pages, and translating documents, exactly the kind of entry-level volunteer activities that the Commission has expressly and repeatedly approved for volunteers regardless of citizenship. Further, as Ms. Nava served as a volunteer intern, she did not make a contribution to the Committee, nor did the Committee violate any laws in hosting her. Because the complaint does not allege facts that would constitute a violation of the Federal Election Campaign Act (the "Act") or FEC regulations, the Commission should immediately dismiss the complaint.

### Background

The Committee routinely offers internships and fellowships to provide future leaders with unique opportunities to strengthen their understanding of the political process.<sup>1</sup> Ms. Nava was selected for an internship, and volunteered at the Committee from June 1, 2015 to July 1, 2015.<sup>2</sup>

<sup>1</sup> Democratic National Committee, *Internships*, <https://www.democrats.org/internships>.

<sup>2</sup> Aff. at 1.

Ms. Nava served in the Community Engagement Department and Communications Department, where she was supervised by Albert Morales, Hispanic Engagement Director, and Pablo Manriquez, Director of Hispanic Media.<sup>3</sup> In this capacity, Ms. Nava performed clerical duties, such as conducting online research, reviewing social media pages, translating documents, and other related tasks.<sup>4</sup> She did not direct, control, or participate in the Committee's decision-making process with respect to contributions, donations, or expenditures, nor was she involved in managing the Committee.<sup>5</sup> During her time as an intern, Ms. Nava received a small volunteer stipend from third party individual donors designed to reimburse and offset the cost of some of her basic expenses.<sup>6</sup>

## Legal Discussion

### I. Individuals May Volunteer for Political Committees Regardless of Citizenship.

FEC regulations prohibit foreign nationals from controlling or participating in the decision-making process of political organizations regarding contributions, donations, and expenditures, or exercising managerial or administrative control of a committee. The rule provides:

A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.<sup>7</sup>

The Commission has explained that the animating purpose of this provision is restricting participation in management and key decision-making aspects of political committees, stating that "foreign nationals are prohibited from taking part in *decisions* about contributions and donations to any [] candidates, [] decisions about expenditures and disbursements made in support of, or in opposition to [candidates], and . . . are prohibited from involvement in the *management* of a political committee."<sup>8</sup>

On the other hand, the Commission has repeatedly allowed individuals---regardless of citizenship---to engage in a range of activities for a political committee that do not amount to managing a committee or participating in its decision-making on significant issues. For example, in Advisory Opinion 2004-26 (Weller), the Commission approved of the fiancé of a Member of Congress, who was not a U.S. Citizen, "attend[ing] Committee events; participat[ing]

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> See Democratic National Committee, FEC Form 3, April 2015 at 179, 994 1839.

<sup>7</sup> 11 C.F.R. § 110.20(i).

<sup>8</sup> *Explanations and Justification, Contribution Limits and Prohibitions*, 67 Fed. Reg. 69928, 69946 (Nov. 19, 2002) (emphasis added).

in Committee events by speaking or by soliciting funds and support for the Committees; participat[ing] in meetings with [the Congressman] and Committee personnel regarding Committee events or political strategy; and accompany[ing] [the Congressman] to the fundraising and campaign events of other political committees.”<sup>9</sup> The Commission approved each of the requested activities, provided the fiancé did “not participate in the Committees’ decision-making processes” and was not “involved in the management of the Committees.”<sup>10</sup>

Similarly, the Commission has also recently held that there is no legal issue with foreign nationals working with political committees to create websites, logos, and other items for a campaign, engaging in organizing activity such as door-to-door canvassing and get out the vote activity, and performing at a candidate’s fundraiser.<sup>11</sup>

The Commission has reached several decisions demonstrating that 11 C.F.R. § 110.20(i) is aimed not at entry-level volunteer activities but rather foreign nationals that exercise control over political committees or are engaged in other decisions about specific Committee contributions or expenditures to support candidates. For example, the Commission has held that foreign nationals on a corporate board or holding other senior positions within a corporation may not vote on the selection of individuals who would operate a PAC or exercise decision-making authority with respect to contributions and expenditures by the PAC.<sup>12</sup> The complaint alleges no facts showing that Ms. Nava did anything of the sort here.

The Commission may find “reason to believe” that a violation has occurred only “if a complaint sets forth sufficient facts, which, if proven true, would constitute a violation of the [Act].”<sup>13</sup> The complaint plainly fails to meet this threshold. The complaint leaps to a conclusion that Ms. Nava “is helping the DNC craft its political message and communications to women, Hispanics, and others . . . in order to achieve political success in the 2016 Presidential, Congressional, Gubernatorial, and local elections” and fails to offer any support for any specific decision-making regarding contributions or expenditures in which Ms. Nava may have been involved.<sup>14</sup> The law “does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support these charges.”<sup>15</sup>

<sup>9</sup> FEC Adv. Op. 2004-26 (Weller).

<sup>10</sup> *Id.*

<sup>11</sup> See FEC Adv. Op. 2014-20 (Make Your Laws PAC); FEC Adv. Op. 2007-22 (Hurysz); Factual and Legal Analysis at 6, MURs 5987, 5995, and 6015 (Hillary Clinton for President) (Feb. 30, 2009).

<sup>12</sup> FEC Adv. Op. 2000-17 (Extendicare); 1992-16 (Nansay Hawaii); FEC Adv. Op. 1990-08 (CIT). In FEC Advisory Opinion 1980-100 (Revere), the Commission approved a Committee’s establishment provided “the individuals who will exercise decision-making authority with respect to Committee activities will not be foreign nationals.” The Commission’s concern in another advisory opinion surrounded whether foreign nationals would vote on matters concerning the Committee and vote on the selection of individuals that would “exercise decision-making authority with respect to [Committee] contributions and expenditures.” See FEC Adv. Op. 1982-10 (Syntex) (citing FEC Adv. Op. 1978-21 (Budd Citizenship Committee) and FEC Adv. Op. 1980-100 (Revere Sugar)).

<sup>13</sup> Statement of Reasons of Comm’rs David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas, MUR 4960 (Dec. 21, 2000).

<sup>14</sup> Compl. at 7.

<sup>15</sup> Statement of Reasons of Vice Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Donald F. McGahn, MUR 6056, at 6 n.12 (June 2, 2009).

In truth, the facts here are that, just like the activities approved by the Commission in Advisory Opinion 2004-26, Ms. Nava witnessed and supported the activities of the DNC during her one-month internship, but did not direct or participate in the Committee's decision-making process. Further, Ms. Nava's engagement with the DNC was even less related to management and decision-making than the activities approved in Advisory Opinion 2004-26 and Advisory Opinion 2014-20. Unlike the Congressman's fiancé, at no point did Ms. Nava speak or solicit funds for the DNC or accompany the Committee's principal decision-maker to strategy meetings.<sup>16</sup> Ms. Nava served as a volunteer intern supporting the Committee's Hispanic Engagement Director and Director of Hispanic Media.<sup>17</sup> In that capacity, Ms. Nava did not vote on the selection of individuals who would have decision-making authority over contributions and expenditures.<sup>18</sup> Nor was Ms. Nava involved in managing the DNC.<sup>19</sup> Rather, she performed entry-level duties, such as conducting online research, reviewing social media pages, and translating documents.<sup>20</sup>

The complaint does not show, and indeed Ms. Nava did not participate in decision-making or management decisions or serve on the DNC's Executive Committee or any of its subsidiary decision-making bodies---analogs to the corporate boards evaluated in the advisory opinions discussed above. Ms. Nava was simply an entry-level volunteer intern in the engagement and media offices of a large and sophisticated national political organization. She did not participate in decisions related to contributions, donations, expenditures, or disbursements, the complaint does not put forth any specific facts to the contrary, and accordingly, there was no violation of 11 C.F.R. § 110.20(i).

## II. Volunteer Activities Are Not a Contribution.

To the extent the complaint alleges that Ms. Nava's one-month summer internship was a contribution by a foreign national, the Commission should dismiss the allegation. A contribution is a "gift, subscription, loan [], advance, or deposit of money, or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>21</sup> While foreign nationals are prohibited from making contributions to political committees,<sup>22</sup> uncompensated volunteer services of a foreign national are not a contribution.<sup>23</sup>

Ms. Nava provided her services without charge to the Committee. While she received a volunteer stipend from three individuals, which were properly reported by the Committee,<sup>24</sup> the volunteer services of Ms. Nava do not constitute a contribution. There is nothing to distinguish the present factual scenario from the several advisory opinions issued by the Commission on this

<sup>16</sup> Aff. at 1-2.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 1-2; *cf.* FEC Adv. Op. 1982-10 (Syntex).

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> 11 C.F.R. § 100.52(a).

<sup>22</sup> *Id.* § 110.20(c).

<sup>23</sup> FEC Adv. Op. 2014-20 (Make Your Laws PAC); FEC Adv. Op. 2007-22 (Huryysz); Factual and Legal Analysis at 6. MURs 5987, 5995, and 6015 (Hillary Clinton for President) (Feb. 30, 2009).

<sup>24</sup> See Democratic National Committee, FEC Form 3, April 2015 at 179, 994 1839.

topic.<sup>25</sup> Ms. Nava's service for the DNC falls squarely within the recognized exception for volunteer services.<sup>26</sup> As the complaint does not allege facts showing that Ms. Nava made a contribution to the DNC, the Commission should dismiss this allegation.

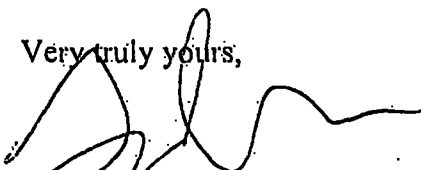
### III. The Committee Did Not Violate the Law by Hosting Ms. Nava.

Lastly, the complaint's allegation that the Committee violated a criminal statute lacks merit and should be dismissed. The statute -- 8 U.S.C. § 1324a -- prohibits "hir[ing]" individuals known to be unauthorized aliens. The regulations define "hire" as the "actual commencement of employment of an employee for wages or other remuneration."<sup>27</sup> Here, the Committee did not "hire" Ms. Nava, as the term is defined. She served as a volunteer intern with the Committee, and the fact that third party individual donors provided her with a small stipend to reimburse her for some of her basic expenses does not alter that fact. Because the Committee did not pay Ms. Nava wages, it did not hire her, and consequently it did not violate the statute.<sup>28</sup>

Ultimately, of course, this allegation exceeds the scope of the Commission's jurisdiction and should be dismissed on that basis alone.<sup>29</sup>

As Judicial Watch failed to present any facts supporting the allegations that the Committee violated the Act, the Commission should dismiss the complaint.

Very truly yours,



Robert E. Bauer  
Graham M. Wilson  
David J. Lazarus

Counsel to Respondents

<sup>25</sup> See FEC Adv. Op. 2014-20 (Make Your Laws PAC); FEC Adv. Op. 2007-22 (Hurysz); Factual and Legal Analysis at 6, MURs 5987, 5995, and 6015 (Hillary Clinton for President) (Feb. 30, 2009).

<sup>26</sup> 11 C.F.R. § 100.74.

<sup>27</sup> 8 C.F.R. § 274a.1(c).

<sup>28</sup> See generally United States Citizenship and Immigration Services, *Who Needs to Complete Form I-9?*, <http://www.uscis.gov/i-9-central/i-9-central-questions-answers/who-needs-complete-form-i-9> ("Form I-9s are not required for volunteers or other unpaid individuals").

<sup>29</sup> See 52 U.S.C. § 30106(b); 11 C.F.R. §§ 111.4, 111.9.

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 6959

AFFIDAVIT OF LINDSEY REYNOLDS

I, Lindsey Reynolds, hereby state as follows:

1. I have personal knowledge of the facts set forth herein and if called to testify in this matter, I would testify as set forth herein.
2. I serve as Chief Operating Officer of the Democratic National Committee (DNC), and served in this role during the period March 1, 2015 to August 1, 2015.
3. During that period the DNC offered Cindy Nava an internship position.
4. Ms. Nava served at the DNC from June 1, 2015 through July 1, 2015. While at the DNC, Ms. Nava worked with the Community Engagement Department and Communications Department. Her supervisors were Albert Morales, Hispanic Engagement Director, and Pablo Manriquez, Director of Hispanic Media.
5. During her summer internship, Ms. Nava performed clerical duties such as conducting online research, tracking social media pages, and translating documents.

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